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IN THE
Supreme Court of the United States
OCTOBER TERM, 1918.

**J. F. LAY, ADMR., ESTATE OF R. M. LAY, DEC'D,
AND EXECUTOR, LAST WILL AND TESTA-
MENT OF JAS. G. LAY, DEC'D, ET AL.,**

Plaintiffs in Error,

vs. No.

**R. C. LAY, ADMR. ESTATE NANCY LAY, DEC'D,
ET AL.,**

Defendants in Error.

MOTION TO DISMISS OR AFFIRM.

Now come R. C. Lay, administrator of the estate of Mrs. Nancy Lay, deceased, R. C. Lay, Mrs. M. E. Lay, Mrs. I. A. Stewart and W. W. Lay, defendants in error in the above entitled cause, by their attorneys, and move the court to dismiss the writ of error in this case to the judgment of the Supreme Court of the State of Mississippi, for want of jurisdiction, because:

(1) The plaintiffs in error in this case predicate a reversal of the decree of the Supreme Court of the State of Mississippi upon the ground that a right, privilege, or immunity was asserted under a statute of the United States, and that the decision of the Supreme Court of the

State of Mississippi was against such right, privilege or immunity. The plaintiffs in error have not secured from this court a writ of certiorari, as provided by Section 237, Judicial Code of the United States, and therefore any such error is not reviewable by this court.

(2) The right, privilege or immunity claimed or asserted by the plaintiffs in error under the Federal statute referred to in the assignment of error of the plaintiffs in error, not having been brought to the attention of the court by writ of certiorari, the question of the constitutionality of the act of Congress limiting attorneys' fees to twenty per cent. of the amount of certain claims appropriated by Congress is not presented, since only the defendants in error are interested therein, and they have invited the Supreme Court of the State of Mississippi to allow the entire fee of fifty per cent.

(3) No Federal question is raised or presented by the record. If any Federal questions are presented in the record, they are wholly formal, and so absolutely devoid of merit as to be frivolous, and have been so explicitly foreclosed by the decisions of this court as to leave no room for controversy.

(4) If the writ of error shall not be dismissed for want of jurisdiction, defendants in error move that the said judgment of the Supreme Court of the State of Mississippi be affirmed on the ground that although in the opinion of this Court the record may show that this Court has jurisdiction, it is manifest that said writ of error was taken for delay only, and the questions upon which the decision of the cause here depends are so frivolous as not to need further argument.

Rule 6, Subdivision 5.



Attorneys for the Defendants in Error
for the Purposes of these Motions.

NOTICE OF MOTIONS.

To the Plaintiffs in ERROR, and Wm. I. McKay of Vicksburg, Mississippi, Attorney of Record for Plaintiffs in Error:

You, and each of you, are hereby notified that the defendants in error, above mentioned, in the foregoing cause, will, on Monday, the day of October, 1918, on the meeting of the Supreme Court of the United States on that day, or as soon thereafter as counsel can be heard, submit for consideration of the Court the foregoing motions, and each of them, and brief thereon, including portions of the record hereto attached and served upon you herewith.



.....
Attorneys for Defendants in Error for
the Purposes of These Motions.

STATEMENT OF FACTS.

The essential facts of this case appear in the opinion of the Supreme Court of the State of Mississippi, reported Lay v. Lay, 79 Sou., page 291. Reference to this opinion is now made in aid of the statement of facts contained herein, the opinion itself being made a part of this record.

During the late civil war between the states, Mrs. Nancy Lay was a resident of Scott County, Mississippi, and was the owner of very valuable property, both real and personal. General Sherman, in his march on Vicksburg, demonstrating that war is hell, passed through the property of Mrs. Lay, destroyed and took away cotton and other personal property of great value.

After the surrender, Mrs. Lay, having been a loyal citizen of the United States during the war, propounded her claim against the United States Government for the destruction of her personal property. Her claim was filed, and it was found that the proper presentation of the claim would require an outlay of some money as well as the investment of considerable time and attention. Mrs. Lay had living with her in her home a relative by name of R. M. Lay, Jr. She stated to him that he might prosecute her claim against the United States Government in her name, provided he would bear the necessary expense and give the case the time essential to its proper presentation; and in the event that anything should be recovered, he should have the benefit of the fruits of the recovery.

R. M. Lay, Jr., who was then a boy, not over nineteen years of age, undertook the collection of the claim in the name of his grandmother, Mrs. Nancy Lay, and she turned over to him her papers and documents, and other evidence of the justice of her cause; and, in her lifetime, with her full knowledge and consent, and with the full knowledge and consent of those under whom the plaintiffs in error claim, R. M. Lay, Jr., in the name of his

grandmother, Mrs. Nancy Lay, and under the agreement hereinbefore set out, undertook the collection of the claim, providing out of his own funds the necessary expense incident thereto, and devoting thereto such attention as was required for gathering testimony and other legitimate purposes.

Mrs. Nancy Lay died about the year 1866, and R. M. Lay, Jr., qualified as administrator upon her estate, and as such administrator continued the prosecution of the claim in question. As administrator of her estate, he employed in Washington, D. C., a firm of lawyers, Messrs. King & King, agreeing to give them fifty per cent. of such amount as might be recovered, executing as administrator of her estate the usual and customary contract in such cases.

The prosecution of the case before the court of claims in Washington, D. C., in the name of R. M. Lay, Jr., administrator of the estate of Nancy Lay, deceased, resulted in the recovery of a judgment in favor of her estate in the sum of \$2,804.00 In the meantime, R. M. Lay, Jr., died, and his son, R. C. Lay, one of the defendants in error in this case, qualified as administrator de bonis non of the estate of Nancy Lay, deceased; and, subsequently, the Congress of the United States made an appropriation to pay the claim in full. Section 4 of the Act of Congress making the appropriation in question contained the following provision:

"That no part of the amount of any item appropriated in this bill in excess of twenty per cent. thereof shall be paid, or delivered to or received by any agent, or agents, attorney, or attorneys on account of services rendered or advances made in connection with said claim."

R. C. Lay, administrator of the estate of Nancy Lay, deceased, collected the sum of \$2,804.00 from the United States Government. There was deducted from the payment, however, by the disbursing officer twenty per cent. of the amount of the claim, which was paid to Messrs.

King & King, Attorneys, Washington, D. C. The remainder of the money was, by the United States Government, paid and delivered to R. C. Lay, administrator of the estate of Nancy Lay, deceased, who accepted and received the same as administrator of such estate, and the United States Government divested itself thereby of all interest in the controversy. R. C. Lay, administrator, was appointed administrator of such estate in the Chancery Court of Scott County, Mississippi, received such fund as an officer of the court, and was accountable to it for the proper distribution thereof, and he gave and filed with the court a good and sufficient bond, guaranteeing his fidelity in the application and distribution of the fund.

After R. C. Lay, administrator, collected the fund in question, he announced his intention of distributing the same among the heirs at law of R. M. Lay, Jr., to the exclusion of the heirs and devisees of Nancy Lay, deceased, claiming under the agreement hereinbefore set out, more specifically referred to in the opinion of the Supreme Court of the State of Mississippi.

It appears from the record that Nancy Lay left a last will and testament, and that, unless defendants in error, in a court of equity in the State of Mississippi, were entitled to claim the fund in question, by reason of the contract by and between Nancy Lay and R. M. Lay, Jr., the entire fund passed to the plaintiffs in error.

The defendants in error, that is to say, the heirs at law of R. M. Lay, Jr., were perfectly willing, and it was their desire that fifty per cent. of the claim be paid to the attorneys in Washington City, who had so faithfully and with such fidelity prosecuted the case to a final determination. The plaintiffs in error, however, sought to avail themselves of Section 4 of the Act of Congress, limiting the attorneys' fees to twenty per cent.

Whereupon, the plaintiffs in error in this case exhibited in the Chancery Court of Scott County, Mississippi, their original petition against R. C. Lay, Adminis-

trator of the estate of Mrs. Nancy Lay, deceased, and the heirs and devisees of R. M. Lay, Jr., as well as King & King, Attorneys, asking for an accounting of and from the administrator of the proceeds of such judgment, and praying that the court direct the administrator to make the distribution of said estate, paying to the devisees of Mrs. Nancy Lay, deceased, to the exclusion of the heirs at law of R. M. Lay, the entire fund, and to confine the attorneys, Messrs. King & King, to a fee of twenty per cent.

The defendants in error, R. C. Lay, Admr., and the heirs at law of R. M. Lay, Jr., filed an answer and a cross-bill, in which they elaborately set out the superior right and claim in a court of equity of the State of Mississippi of the heirs of R. M. Lay, Jr., to the fund in question. They alleged the agreement entered into by and between R. M. Lay and Mrs. Nancy Lay, the fact that the said agreement entered into by and between the said R. M. Lay and Mrs. Nancy Lay, with the full knowledge and consent of those persons under whom the plaintiffs in error claim; that is to say, the brothers and sisters of Mrs. Nancy Lay, deceased, the children of such brothers and sisters; and the defendants in error prayed the court for a decree directing that the entire fund, after payment of the attorneys' fee of fifty per cent. to the attorneys in question, be paid to the heirs at law of R. M. Lay, Jr., to the exclusion of the plaintiffs in error, being the persons who would have received the same under the last will and testament of Nancy Lay but for the agreement by and between Nancy Lay and R. M. Lay, Jr., in respect to the collection of the fund.

At the time of the filing of such proceedings, the fund in question, less the twenty per cent. which had been paid to the attorneys, was in the custody of the Chancery Court of Scott County, Mississippi, which had full and complete and exclusive jurisdiction to direct its payment and distribution. The United States was without further interest therein, since it is admitted that it had discharged a perfectly valid and legitimate claim, which had

ripened into a judgment, through the payment and satisfaction thereof, to R. C. Lay, administrator of the estate of Nancy Lay, an officer of the Chancery Court of Scott County, Mississippi.

Messrs. King & King also propounded a claim for that portion of the attorney's fee, thirty per cent., remaining unpaid.

Upon such issues, as above outlined, the cause went to trial in the Chancery Court of Scott County, Mississippi. It being the contention of the plaintiffs in error that the defendants in error had absolutely no interest in the fund in question, because the alleged contract by and between Nancy Lay and R. M. Lay, Jr., was in violation of Section 3477 of the Revised Statutes of the United States, being Section 6383 of the U. S. Comp. Statutes, Ann.

It was the further contention of plaintiffs in error that Messrs. King & King, the attorneys, should be confined to an attorney's fee of twenty per cent., in accordance with the limitation contained in Section 4 of the Act of Congress making appropriation for the allowance of the claim.

It was also denied by the plaintiffs in error that there was any agreement or transfer on the part of Nancy Lay to R. M. Lay, Jr., respecting the claim in question.

At the trial of the case, the presiding judge or chancellor made the following finding of facts:

"After hearing oral argument of counsel, the cause was taken under advisement, and briefs on behalf of all parties were submitted; and it appearing to the court that during the late civil war there accrued to the said Nancy Lay, now deceased, a claim against the United States for the value of certain of her property taken or destroyed by the Union or Federal army; that prior to her death, the said Nancy Lay assigned and transferred her said claim against the United States to her grandson, R. M.

Lay, Jr.; that after the death of the said Nancy Lay, her said grandson, R. M. Lay, Jr., was appointed and qualified as administrator of the estate of his said grandmother, the said Nancy Lay, deceased; that the respondents and cross-complainants are the widow and children or legal heirs at law of the said R. M. Lay, Jr., deceased; that after the death of the said R. M. Lay, Jr., his son, R. C. Lay, was appointed and qualified as administrator de bonis non of the estate of the said Nancy Lay, deceased, as successor of his father, deceased, as administrator; that during the lifetime of the said R. M. Lay, Jr., he, as administrator of his said grandmother's estate, made, without authority of law, or sanction of any court, two fee contracts with said King & King, Attorneys, to prosecute said claim, in each of which contracts the legal title to and ownership of said claim was asserted and recognized to be in the estate of Naney Lay, deceased, and to one of which contracts, the oath of the said administrator was made that said claim belonged to the estate of Naney Lay, deceased, filed a suit against the United States on said claim in the Court of Claims, and in support of such claim, made oath and produced such evidence as to cause said court of claims finally to find and adjudicate that said claim belonged solely to the estate of Nancy Lay, and that her estate was entitled to the amount thereof, and that no assignment had been made to any one."

And the decree of the presiding judge, in addition to the statement of facts hereinbefore set out, contained the following provision:

"That the bill of complaint be, and the same is hereby sustained, and that the cross-bill be and is hereby dismissed, for the reason that the cross-complainants, as the heirs and privies of R. M. Lay, Jr., deceased, are estopped to claim said sum or fund because of the said administrator and the final judgment of the court of claims adjudging this sum or fund to belong to the estate of Nancy Lay, deceased."

As the result thereof, a decree was rendered, denying

the right of the defendants in error to any part of the fund, and awarding to the plaintiffs in error, as the representatives of Mrs. Nancy Lay, deceased, the entire fund.

The trial court further held that the attorneys, Messrs. King & King, were not entitled to any further or additional compensation than that provided by the Act of Congress.

The defendants in error in this motion, as well as Messrs. King & King, prosecuted an appeal to the Supreme Court of the State of Mississippi, and the Supreme Court of the State of Mississippi reversed the judgment of the Chancery Court of Scott County, Mississippi, and entered a decree, paying to Messrs. King & King the unpaid portion of their fee of 30 per cent., and awarding the balance of the fund to the heirs at law of R. M. Lay, Jr., in accordance with the agreement had and entered into by and between Mrs. Nancy Lay and R. M. Lay, Jr. The opinion of the Supreme Court of the State of Mississippi is as follows:

"This appeal is prosecuted from a decree of the Chancery Court of Scott County, awarding to the appellees \$2,243.20, now in the hands of R. C. Lay, as administrator de bonis non of the estate of Mrs. Nancy Lay, deceased. About the year 1870, Mrs. Nancy Lay, a resident of Scott County, departed this life, leaving an unsatisfied claim against the United States Government for the destruction of certain of her property by Federal soldiers during the civil war. During the life of Nancy Lay, she asserted her claim against the United States Government, and employed one T. B. Johnson, an attorney, to represent her; but for some reason, Nancy Lay declined to prosecute her claim further at her own expense, and preferred to assign, and did elect to assign and give her claim to her grandson, R. M. Lay, Jr., then a young man, who had formerly been taken into her home as a member of her household. We shall not here state or analyze the facts in reference to this assignment. This is due to the

fact that the transcript of the stenographer's notes has, by motion of the appellees, been stricken from the record, and while there are certain depositions left in the record, it yet remains that all the facts before the chancellor are not now lawfully a part of the record, and we must look to the findings of fact and the conclusions reached by the chancellor in his final decree. The decree shows upon its face that the issues presented to the chancellor were heard upon the pleadings, and upon "depositions and oral testimony," and the decree recites in part that, "It appearing to the court that during the late civil war, there accrued to the said Nancy Lay, now deceased, a claim against the United States for the value of certain of her property taken or destroyed by the Union or Federal army; that prior to her death, the said Nancy Lay assigned and transferred her said claim against the United States to her grandson, R. M. Lay, Jr.; that after the death of said Lay, her said grandson, R. M. Lay, Jr., was appointed and qualified as the administrator of the estate of his said grandmother, the said Nancy Lay, deceased," etc. The decree recites that a suit in the court of claims was prosecuted to a successful termination, and that the attorneys employed to do the work were King & King of Washington. The court of claims allowed and paid the sum of \$2,804.00. Congress in appropriating the money to pay the judgment, provided by Sec. 4 of the Act as follows:

"That no part of the amount of any item appropriated in this bill in excess of twenty per centum thereof shall be paid or delivered to or received by any agent, or agents, attorney or attorneys, on account of services rendered or advances made in connection with said claim."

The written contract for the employment of King & King provided for the payment of "a fee equal to 50 per cent of the amount which may be allowed on said claim;" but on account of said section of the Act, only 20 per cent. was paid direct to the attorneys, and the balance, \$2,243.20, was paid to the administrator de bonis non and

accounted for in his final account. The final account asked the chancellor to direct how and to whom these funds should be paid. In addition to the presentation of the final account, certain heirs at law and devisees of Nancy Lay, the deceased, filed their original bill of complaint in this cause, claiming the funds in question under the residuary clause of the last will and testament of Nancy Lay. The heirs of R. M. Lay, Jr., answered this bill, and made their answer a cross-bill, in which they claim the funds under the gift and assignment executed by Nancy Lay to the said R. M. Lay, Jr. Without a further statement of the pleadings or the relationship of the parties, it may be stated briefly that there are two questions presented by this appeal. First, the validity of the assignment by Nancy Lay to her grandson is attacked as being in violation of Sec. 6383, United States Compiled Statutes, Annotated, formerly Revised Statutes, Sec. 3477, being in the following words:

“All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments and powers of attorney must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer at the time of the acknowledgment, read and fully explained the transfer, assignment or

warrant of attorney to the person acknowledging the same."

It is also claimed that the heirs at law of R. M. Lay, Jr., are now estopped to claim the funds because of the fact that R. M. Lay, Jr., in his lifetime prosecuted the claim against the government in the name of Mrs. Nancy Lay; that he made affidavits that Nancy Lay was the owner of the claim, and represented to and contended before the court of claims that she was the unconditional owner. The second point presented by the appeal is the validity of the claim of King & King, and Judge Paul B. Johnson, son of the Mr. Johnson first employed as attorney, for a balance of 30 per cent of the funds as attorneys' fees. The contract for the employment of the attorneys was executed in writing by R. M. Lay, Jr., as the lawful administrator of Nancy Lay, and after his death the contract was renewed by R. C. Lay as administrator de bonis non. By both of these contracts, the attorneys' were to receive 50 per cent of the amount allowed and collected. It is conceded that the attorneys prosecuted the claim with diligence and ability, but recovery was denied by the learned chancellor because of the Act of Congress quoted in part above. The court also held that R. M. Lay, Jr., and his heirs were estopped to claim the funds notwithstanding the gift and assignment. So it is that the facts have been settled by the chancellor, and the questions presented to us are purely questions of law.

We shall first discuss and dispose of the question of attorney's fees. Appellants contend that Sec. 4 of the Act is unconstitutional and void, being in derogation of appellees' liberty of contract without due process of law, and operating to deprive appellees of their property and the fruits of their lawful contract without due process of law. It is also contended that the attorneys, who are appellants herein, have an equitable lien upon the funds produced by their professional labors and by the expenditure of their time and money. It is nowhere shown that the contract made with the attorneys is invalid, although

the contention is made that the amount of the fee is unreasonable and that the contract violates Sec. 4 of the Act of Congress making the appropriation. If the administrator would have been justified in paying this claim and taking credit therefor, then the allowance would now be proper. It appears that the real obstacle in the way of the allowance is the Act of Congress, and this brings us to the constitutionality of this statute. Without attempting a reasoned opinion upon this subject, we are satisfied with the conclusions reached by the Supreme Court of Tennessee, Kentucky and the District of Columbia. Section 4 of the Act has been declared unconstitutional in the following cases: Moyers v. Fahey, 43 Wash. Law Rep. 641; Newman v. Moyers, 45 Wash. Law Rep. 774; Moyers v. Memphis (Tenn.), 186 S. W. 105; Black v. O'Hara (Ky.), 194 S. W. 811. The same result has been reached by certain other courts of original jurisdiction. In Newman v. Moyers & Consaul, *supra*, the Court of Appeals of the District of Columbia observed in a case dealing with the identical question:

“When Congress attempted to reduce the fee called for by plaintiff's contract, it amounted to taking their property, due them under a private valid contract, and handing it over to another. If this is not a deprivation of liberty and property without due process of law, it would be difficult to conceive of a case where the inhibition of the Constitution would apply. * * * It is difficult to conceive of a more dangerous or tyrannical system of government than that which would logically spring into existence if the legislative fiat were held to be supreme.”

In the case of Black v. O'Hara, decided May 15, 1917, the Kentucky court said:

“Congress was without power to dictate, upon the one hand, how the claimant should enjoy or use his property, when reduced to possession, or, upon

the other hand, to deprive appellant's testator, arbitrarily and without due process, of his property rights in his contract, because to do either would violate the Fifth and Fourteenth Amendments to the Constitution, which provide that no person shall be deprived of life, liberty or property without due process of law. * * * * The considered provision of the act was not an exercise of either an express or implied power of Congress, and was in contravention of a constitutional guaranty."

The observations of the Supreme Court of the United States in the case of *Allgeyer v. Louisiana*, 165 U. S. 578; defining the meaning of the word "liberty" as employed in the Federal Constitution, are pertinent to the present inquiry. The validity of contingent fee contracts has been upheld by our courts, state and federal.

As to the reasonableness of the fee, there is nothing in the record to show that the allowance would be excessive. The amount of the fee was satisfactory to R. M. Lay, Jr., who himself entered into the written contract; and under the view which we entertain of the other point argued, we do not think appellees are in position to question the amount. We conclude, therefore, that the attorneys are entitled to their balance of 30 per cent. in accordance with the terms of the written contract.

As between the parties to this suit, the rival claimants of the net funds, after attorneys' fees and expenses have been paid, we conclude that the heirs at law of R. M. Lay, Jr., should recover. We repeat that the chancellor found as a fact that Nancy Lay in her lifetime assigned and transferred her interest in the claim to R. M. Lay, Jr. We assume that he was fully warranted by the testimony in so finding. The Federal statute rendering null and void all transfers and assignments of a claim against the United States prior to the time such claim is allowed and warrant issued therefor is not controlling as between ap-

pellants and appellees. As stated by our own court in *Fewell v. American Surety Co.*, 80 Miss., 782:

"The United States is not interested in this litigation. The contract was fully executed so far as the Government was concerned. * * * The primary purpose of these statutes is to protect the Government, and they can not be relied upon for protection by parties situated as the appellees are,"

citing *Goodman v. Niblack*, 102 U. S. 566; *Bailey v. United States*, 109 U. S. 432; *Nobbs v. McLean*, 117 U. S. 567; *Freedman's Savings Co. v. Shepherd*, 127 U. S. 494; *Yorke v. Conde*, 147 N. Y. 486, approved in 168 U. S. 642. All of these authorities are in point, and have been referred to with approval by our own court. They settle the question that the Federal statute has no application between the contesting claimants of the funds, the United States being in no way a party or interested in the result. See, also, *Burnett v. Mayor and Aldermen of Jersey City*, 31 N. J. Eq., 341; *Hawes & Co. v. Triggs* (Va.), 65 S. E. 538; *Farmers' National Bank v. Robinson* (Kans.), 53 Pac. 762; *Jernegan v. Osborne* (Mass.), 29 N. E. 520. The primary object of the statute was to prevent fraud against the United States, and the Government can always rely upon the statute in any case where it is directly interested. Here, the Government has allowed the claim, made an appropriation therefor, and fully paid the judgment rendered by the court of claims. The funds are now under the jurisdiction of our state court, and the equitable and legal rights of the parties must govern. We do not think the appellants are estopped to claim the funds. Our court has many times declared the essential elements of estoppel. There is no showing whatever that the mere presentation of this claim, first, in the name of Mrs. Nancy Lay, and, thereafter, in the name of her administrator prejudiced the rights of appellees in any manner or to any extent. The position assumed by R. M. Lay, Jr., in his lifetime did not cause appellees to change their position to their hurt or injury, and did not operate to deprive them of any

of their rights. If there was a valid claim, it was to the interest of all parties concerned to have that claim prosecuted and allowed. This, R. M. Lay, Jr., did. Now, that the claim has been paid, the sole question before us is one of real ownership, and in answering this question, the equitable and legal rights of the parties, unaffected by Federal statutes, must govern. The facts being settled, there is no occasion to remand this cause for further proceedings. We direct that decree be entered here dismissing the bill of complaint exhibited by appellees; that the cross-bill of appellants be sustained; that the attorneys, King & King and Paul B. Johnson, be given a decree for the balance of their attorneys' fees; that the costs of this appeal be paid out of any moneys now in the hands of the administrator, and that the net proceeds of the fund in question be paid over to the heirs at law of R. M. Lay, Jr., in accordance with the views expressed in this opinion.

Reversed and decree here for appellants.

Accordingly, a decree was entered by the Supreme Court of the State of Mississippi, from which decree, this appeal is prosecuted, and the following error is assigned by the plaintiffs in error.

"PETITION FOR WRIT OF ERROR."

"Considering themselves aggrieved by the final decision of the Supreme Court in rendering judgment against them in the above entitled case, the appellees hereby pray a writ of error from the said decision and judgment, to the United States Supreme Court, and an order fixing the amount of a supersedeas bond.

“ASSIGNMENT OF ERRORS.

“And the said J. F. Lay et al., appellees, assign the following errors in the records and proceedings of the said case:

“The Supreme Court of Mississippi erred in holding and deciding that Section 3477 of the Revised Statutes of the United States had no effect, operation or application in the said case; that the final judgment of the United States Court of Claims, adjudging the title of the property in question to belong to the person through whom appellees claim, had no effect, operation or application in said case; and that Section 4 of the Act of Congress of March 4, 1915, limiting to twenty per centum the amount of fees to be paid to attorneys on account of services in connection with certain claims against the United States, was invalid and unconstitutional.

“The said errors are more particularly set forth as follows:

“The Supreme Court of Mississippi erred in holding and deciding:

“First. That the voluntary assignment of a claim against the United States, prior to the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof, was valid and effective, notwithstanding the provisions of Section 3477 of Revised Statutes of the United States, the appellees contending that such assignment was null and void under said section of the Revised Statutes.

“Second. That the final judgment of the United States Court of Claims adjudging the claim against the United States and its funds or proceeds in question in said case, to be the property of the person through whom appellees claim, had no effect, operation or application in said case, the appellees claiming in accordance with the said

judgment of the Court of Claims and the appellants to the contrary.

“Third. That Section 4 of the Act of Congress of March 4, 1915, limiting to twenty per centum the amount of fees to be paid attorneys on account of services rendered in connection with the claim against the United States, in question in said case, was invalid and in violation of the Constitution of the United States.

“For which errors, the appellees pray that the said judgment of the Supreme Court of the State of Mississippi, dated June 3rd, 1918, be reversed and a judgment rendered in favor of the appellees and for costs.”

“J. C. BRYSON,

“WM. I. MCKAY,

“Attorneys for Appellees.

“State of Mississippi,

“Supreme Court.

“Let this writ of error issue upon the execution of a bond by the appellee to the appellants in the sum of one thousand dollars; such bond, when approved, to act as a supersedeas.

“SYDNEY SMITH,

“Chief Justice, Supreme Court of Mississippi.”

“Dated July 9, 1918.”

Plaintiffs in error secured a writ of error from the Chief Justice of the Supreme Court of the State of Mississippi, but have secured no writ of certiorari from this Court, as required by law.

STATEMENT OF THOSE PORTIONS OF THE RECORD PRINTED AND APPENDED HERETO.

For the purpose of the motions, the defendants in error, pursuant to the rules and practices of this Court, have caused to be printed and attached to this brief por-

tions of the record embodying all the material and pertinent parts of the transcript which relate to the motions filed therein, omitting those parts of the transcript which are not essential to the proper consideration of the motions.

Carey v. H. & T. C. Ry. Co., 150 U. S. 179;
Walston v. Nevin, 128 U. S. 578.

ARGUMENT.

POINT I.

Right, privilege or immunity asserted by plaintiffs in error under Section 3477, Rev. St. U. S., not presented because no writ of certiorari obtained.

At the threshold of this argument, it is only necessary to call attention of the court to the fact that the plaintiffs in error have not secured a writ of certiorari from this Court, as provided by Section 237 of the Judicial Code of the United States. The Plaintiffs in error assign as error the action of the Supreme Court of the State of Mississippi in holding inapplicable to the present case Section 3477 of the Revised Statutes of the United States. In other words, it is the claim of the plaintiffs in error that under such section, defendants in error could acquire no right, title or claim to the funds forming the subject-matter of this litigation; and under the same section, plaintiffs in error assert that title to the fund in question was vested in the plaintiffs in error.

Conceding for the purposes of this argument that a Federal question is presented by such assertion, there was but one way for the plaintiffs in error to present this contention to this Court, and that was by obtaining a writ of certiorari from this Court. The question is not presented by a writ of error from the State court. The opinion of this Court, through Mr. Justice Vandeveenter, in the case

of Philadelphia & Reading Coal & Mining Co. v. Gilbert, 245 U. S. Rep. 162, leaves nothing to be said. In that connection, the Court used the following language:

"Under Sec. 237 of the Judicial Code, as amended September 6th, 1916, c. 448, 39 Stat. 726, a final judgment or decree of a state court of last resort in a suit 'where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their validity,' may be reviewed in this court upon writ of error; but if the suit be one 'where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is in favor of their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is against their validity; or where any title, right, privilege or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under the United States, and the decision is either in favor of or against the title, right, privilege or immunity especially set up or claimed, by either party, under such Constitution, treaty, statute, commission or authority,' the judgment or decree can be reviewed in this court only upon a writ of certiorari. The difference between the two modes of securing a review, as contemplated by the statute, lies in the fact that a writ of error is granted as of right, while a writ of certiorari is granted or refused in the exercise of a sound discretion'"

POINT II.

Appeal will be dismissed where no Federal question is presented.

It is well settled that where a writ of error to this court presents no Federal question, the court acquires no jurisdiction, and the appeal will be dismissed. It is equally well settled that where the alleged Federal questions are wholly formal or so devoid of merit as to be frivolous, or have been so explicitly foreclosed by the decisions of this Court as to leave no room for real controversy, this Court will decline to entertain jurisdiction thereof. Mr. Taylor, in his work on Jurisdiction and Procedure in the United States Supreme Court, says:

“A writ of error from the Federal Supreme Court will be dismissed, where the Federal question relied upon to such jurisdiction manifestly lacks all color of merit.”

And in the case of *Equitable Life Assurance Society v. Brown*, 187 U. S. 308, 47 Law Ed. 190, this Court said:

“But it is well settled that not every mere allegation of a Federal question will suffice to give jurisdiction. There must be a real substantive question on which the case may be made to turn; that is, a real and not merely formal Federal question is essential to the jurisdiction of this Court. Stated in another form, the doctrine, as declared, is that, although in considering a motion to dismiss, it be found that a question adequate, abstractly presented, to confer jurisdiction was raised, if it likewise appear that such question is wholly formal, is so absolutely devoid of merit as to be frivolous, or has been so explicitly foreclosed by a decision, or decisions, of this Court as to leave no room for real controversy, the motion to dismiss

will prevail New Orleans Water Works Company v. Louisiana, 185 U. S., 336, and authorities there cited."

The same rule is found in the following cases:

New York & N. E. R. R. Co. v. Bristol, 151 U. S. 556, 38 Law. Ed. 269;

Southern R. R. Co. v. Carson, 194 U. S. 136, 48 Law. Ed. 907;

Louisville & Nashville R. R. Co. v. Melton, 218 U. S. 36, 54 Law. Ed 921;

Easterling Lbr. Co. v. Pierce, 235 U. S. 380, 59 Law. Ed. 279.

Erie R. R. Co. v. Solomon, 237 U. S. 427, 57 Law. Ed. 1033;

Manhattan Life Ins. Co. v. Cohen, 234 U. S. 123, 58 Law. Ed. 1245.

Our position is that no Federal question was raised or presented in the lower court; but, if mistaken in this, our position then is that a Federal question, even if raised and presented, is purely formal, devoid of merit, has been foreclosed by previous adjudications of this Court, and the writ of error prosecuted merely for delay. In order to maintain these motions, we desire to submit the following propositions, supported by citation of authorities:

POINT III.

The United States having fully paid and discharged the claim had against it by the estate of Nancy Lay, deceased, and such fund having been paid and delivered to the custody of the Chancery Court of Scott County, Mississippi, and all liability against the United States by reason of such claim having become extinguished, Section 3477 of the Revised Statutes of the United States, being Section 6383 of the Compiled Statutes, Ann., was without application, and the Supreme Court of the State

of Mississippi had the right, having the exclusive control and jurisdiction of such fund, to direct its distribution and application in accordance with what it determined to be the strongest equities.

The Act of Congress referred to is as follows:

"All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments and powers of attorney must recite the warrant for payment, and must be acknowledged by the person making them before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment or warrant of attorney to the person acknowledging the same."

Our position is that this section was in no manner involved, and is not applicable to the present controversy, for the reason that no claim was pending against the United States at the time of the rendition of the decree appealed from. Upon the other hand, the United States confessedly and admittedly had extinguished all liability against it by reason of its having paid the fund in question into the Chancery Court of Scott County, Mississippi; that it was without interest in the controversy; and, therefore, the inapplicability of the Federal statute referred to

has been repeatedly foreclosed by the adjudications of this Court.

The case of *York v. Conde* (N.Y.), 42 N. E., 193, 168 U. S. 642, 42 Law. Ed., 611, is decisive of this controversy. In that case, a contractor had a contract with the United States for the erection of a public building in the state of New York. In order to secure an indebtedness, he made an assignment of a certain portion of the fund owing him by the United States arising out of such contract. Subsequently, and for the same purpose, the contractor made another assignment to a different firm of such fund, such latter assignee having actual notice of the prior assignment. The United States paid the fund to the latter assignee. Suit was brought by the prior assignee, and the invalidity of the assignment in question to the holder of the first assignment, growing out of the Federal statute involved in this controversy, was pleaded. The appellate court of New York, however, held that since the United States had divested itself of all interest in the fund by reason of its payment and extinguishment of all liability against itself, the statute in question was inapplicable, using the following language:

“Its object was to protect the government. It was enacted, as was said by Mr. Justice Miller in *Goodman v. Niblack*, 102 U. S., 556, to prevent embarrassments to the government which might arise if it was compelled to recognize rights of third persons not parties to the original contract or transaction; and, second, to shut the door to improper influences in prosecuting claims before the departments or courts of Congress. There are two theories of construction of the statute: One is that which gives the widest meaning to the words, and which makes a transfer or assignment of a claim or interest void, not only as to the government and its officers, but as to the parties to the transfer or assignment. Upon this theory, the money, when paid over to the original claimant, can not be

reached in his hands, unless after the allowance of the claim and the issuing of a warrant for its payment, the provisions of the section are complied with. This theory wholly forbids the acquisition before this has been done of any right in the fund through any transfer or assignment, however formal the instrument, or however just and innocent the transaction. The other theory is that the objects of the statute are accomplished by a construction which makes an assignment or transfer made before the allowance of a claim void as between the claimant and the government, but leaves the transferee, after the fund has come to the hands of the claimant, to assert such legal rights against the fund, and avail himself of such legal remedies to enforce them, as exist in other cases of transfer. The Supreme Court has consistently maintained that a transfer or assignment made before the allowance of a claim was void at the election of the government, and that, as against the assignee or transferee, the government may wholly disregard it, and that payment made to the original claimant by the government is a good acquittance of the liability, although it had notice of the transfer at the time. But the court has also decided that the government may recognize such a transfer, and that payment to the transferee will protect it against any subsequent claim of the original party. *Bailey v. U. S.*, 109 U. S., 432, 3 Sup. Ct. 272."

On appeal to this court, a motion was made by the defendant in error to dismiss or affirm, just as is made in the present case, upon the ground that no Federal question was involved, since the Federal statute had no application to a case where no claim was pending against the United States. This Court dismissed the writ of error, holding the statute inapplicable, using the following language:

"Many decisions of this court in respect of Sec. 3477 were then considered, and the conclusion reached that the section had been so construed as to permit transfers made in the legitimate course of business, in good faith, to secure an honest debt, while they might be disregarded by the government, to be sustained as between the parties so far as to enable the transferees, after the government had paid over the money to its contractors, to enforce them against the latter, or those taking with notice. The court held in effect that such was the transaction in the case at bar, and that the transfer to York and Starkweather was simply to secure them for material actually used by the contractors in performing their contract with the government, and amounted to nothing more than the giving of security, and not to the assignment of a claim to be enforced against the government. The United States had, in due course, paid over the money to the contractors, and between them there was no dispute; nor had the United States any concern in the question as to which of the several claimants was entitled to the fund, the proper distribution of which depended on the equities. What the New York courts determined was that the equities of York and Starkweather were superior to those of Conde and Streeter, and judgment went accordingly. In order to give this court jurisdiction to review the judgment of a state court against a title or right set up or claimed under a statute of, or an authority under, the United States, that title or right must be a title or right of the plaintiff in error, and not of a third person only; and the statute or authority must be directly in issue. In this case, the controversy was merely as to which of the claimants had the superior equity in the fund; the statute was only collaterally involved; and plaintiff in error asserted no right to the money based upon it."

This decision is directly in point, and is conclusive of the present controversy. Opposing counsel will necessarily concede that in order to overrule the motion to dismiss or affirm in this case, the case will necessarily be overruled. The statute in question has been frequently construed by this court, and from these decisions there arises a thoroughly well-established rule that the statute, while it is enforceable between the parties and is perfectly valid, in order that it may be applicable, there must be pending at the time an unsatisfied claim against the United States, asserted, or threatened to be asserted, by the party falling within the condemnation of the statute; and it is equally as well settled that the statute has no application, if at the time of the rendition of the judgment or decree, there be no outstanding claim assertable against the United States.

The case of *Goodman v. Niblack*, 102 U. S., 556, 26 Law. Ed., 229, is directly in point. In that case a man by the name of Sloo had a claim against the United States. He became insolvent, and made a general assignment to certain trustees for the benefit of his creditors, and the question was presented as to whether or not such assignment of the claim against the United States passed under a voluntary assignment for the benefit of creditors, in view of the Federal statute involved in this case. This court held that the assignment did not offend against the statute, because the United States Government had paid the entire sum; there was no controversy between the United States and any other parties in respect to the claim, using the following language:

“And it is understood that the Circuit Court sustained the demurrer in this case under pressure of the strong language of the court in *Spofford v. Kirk*. We do not think, however, that the circumstances of the present case bring it within the one then under consideration, or the principles there laid down. That was a case of the transfer or assignment of a part of a disputed claim, then in con-

troversy, and it was clearly within all the mischiefs designed to be remedied by the statute. These mischiefs, as laid down in that opinion, and in the others referred to, were mainly two."

The question was also presented in the case of Hobbs v. McLean, 117 U. S., 567, 29 Law. Ed., 940. In that case an individual made a contract with the United States for the erection of a public work. He then formed a partnership with other persons, to whom he transferred his interest in the contract. A controversy arose over the disposition of the fund, and the invalidity of the transfer, as being violative of the statute referred to was claimed, in respect to which contention, this Court used the following language:

"We are of the opinion that the partnership contract was not opposed to the policy of the statute. The section under consideration was passed for the protection of the government. Goodman v. Niblack, 102 U. S., 556, 26 Law. Ed., 229. They were passed in order that the government might not be harassed by multiplying the number of persons with whom it had to deal and it might always know with whom it was dealing when a contract was completed and settlement made. The purpose was not to dictate to the contractor what he should do with the money received upon his contract after the contract had been performed."

The statute was under consideration by this court in the case of Bailey v. United States, 109 U. S. 430, 27 Law. Ed. 988. In that case there was an assignment of certain funds owing by the United States and a power of attorney given to collect the same. The power of attorney was recognized by the government, the fund delivered to the attorney and assignee. The assignors claimed that the payment was void, because made in violation of the statute now under consideration. This Court held otherwise, using the following language:

"In the case before us, the question arises as to the transfer or assignment of a claim against the government. The question is whether payment to one, who has been authorized to receive it, by the power of attorney executed before the allowance of the claim by the Act of Congress, was good as between the government and the claimant, where, at the time of payment, such power of attorney was unrevoked. If, in respect of transfers or assignments of claims, the purpose of the statute, as ruled in *Goodman v. Niblack*, was to protect the government, not the claimant in his dealings with the government, it is difficult to perceive upon what ground it could be held that the statutory inhibition upon powers of attorney in advance of the allowance of the claim and the issuing of the warrant, can be used to compel a second payment after the amount thereof has been paid to the person authorized by the claimant to receive it. A mere power of attorney given before the warrant was issued,—so long, at least, as it is unexecuted,—may undoubtedly be treated by the claimant as absolutely null and void in any contract between him and his attorney in fact. And it may be so regarded by the officers of the government whose duty it is to adjust the claim and issue a warrant for its amount. But if those officers chose to make payment to the person whom the claimant by formal power of attorney has accredited to them as authorized to receive payment, the claimant can not be permitted to make his own disregard of the statute the basis for impeaching the settlement had with the agent. To hold otherwise would be inconsistent with the ruling heretofore made,—and with which, upon consideration, we are entirely satisfied,—that the purpose of Congress, by the enactments in question, was to protect the government against frauds upon the part of claimants and those who might

become interested with them in the prosecution of claims, whether before Congress or the several departments, the title of the Act of 1853 suggests this purpose. It is to prevent frauds upon the treasury."

The case of Rodman M. Price v. Forrest, 173 U. S. 410, 43 Law. Ed. 749, is in point. In that case, a man by the name of Price had a claim against the United States. Having become involved with his creditors, a receiver was appointed to obtain the warrant and collect the money from the United States. It was contended by the heirs of the claimant Price that the transaction was an assignment, was in violation of the statute, and passed no title to the receiver and those claiming under him. It appeared, however, that the United States had paid the money into court, that no claim was pending against the United States by reason thereof, and that it was without interest in the controversy. This Court held the statute inapplicable, using the following language:

"While the present case differs from any former case in its facts, we think that the principle announced in Erwin v. United States and Goodman v. Niblack justified the conclusion reached by the state court. That court held that it had jurisdiction under the laws of the state, and as between the parties before it, to put into the hands of its receiver any chose in action of whatever nature belonging to Price and of which he had possession or control. The receiver did not obtain from Price in his lifetime an assignment of his claim against the United States. But having full jurisdiction over him, the court adjudged that as between Price and the plaintiffs who sued him, the claim should not be disposed of by him to the injury of his creditors, but should be placed in the hands of its receiver subject to such disposition as the court might determine as between the parties before it and as was consistent with law. The suit in which the receiver

was appointed was, of course, primarily for the purpose of securing the payment of the judgment obtained by Samuel Forrest in his lifetime against Rodman M. Price. But that fact does not distinguish the case in principle from *Goodman v. Niblack*; for the transfer in question to the receiver was the act of the law, and whatever remained, whether of property or money, in his hands after satisfying the judgment, and the taxes, costs or expenses of the receivership, as might be ordered by the court, would be held by him as trustee for those entitled thereto, and his duty would be to pay such balance into court to the credit of the cause, ‘to be there disposed of according to law.’ Revision of N. J. 1876, p. 394.”

The case of *McGowan v. Parrish*, 237 U. S. 285, 59 L. Ed. 955, is directly in point. In that case, Mr. McGowan, an attorney, had a contract for collection of a claim against the United States, and had an assignment of an interest in the claim for his fee. After the allowance of the claim by Congress, when the money was about to be paid to the original claimants, to the exclusion of the attorney, suit was filed by the attorney in order to enforce a lien on the warrant in process of delivery. It was agreed between the parties that an amount sufficient to satisfy the alleged claim of the attorney should be paid into court in order that the rights of the attorney might be determined. The United States paid the money into court, secured immunity from all liability, and in that case the question of the assignment was presented, and this Court said that the statute was for the protection of the government, and since there was no claim asserted against the government, but that the money had been paid into court, under the facts in that case, the statute was inapplicable, using the following language:

“As to the effect of Section 3477 Rev. Stat., Comp. Stat. 1913, See. 6383, it has been several times declared by this court that the statute was

intended solely for the protection of the government and its officers during the adjustment of claims, and that, after allowance, the protection may be invoked or waived, as they, in their judgment, deem proper. *Goodman v. Niblack*, 102 U. S. 556, 560, 26 L. Ed. 229, 231; *Bailey v. United States*, 109 U. S. 432, 439; 27 Law Ed. 988, 990, 3 Sup. Ct. Rep. 272; *Hobbs v. McLean*, 117 U. S. 567, 576, 29 L. Ed. 940, 943, 6 Sup. Ct. Rep. 870; *Freedman's Savings & T. Co. v. Shepherd*, 127 U. S. 494, 506, 32 L. Ed. 163, 168, 8 Sup. Ct. Rep. 1250; *Price v. Forrest*, 173 U. S. 410, 423, 43 L. Ed. 749, 753, 19 Sup. Ct. Rep. 434. But see *Nutt v. Knut*, 200 U. S. 12, 20; 50 Law. Ed. 348, 352, 26 Sup. Ct. Rep. 216.

"In this case, the officers of the government, after the suit was commenced (the claim having already been allowed and finally adjudicated), found that they needed no protection from the statute, and were safe in paying into court to the credit of the cause a sufficient amount to answer the claim of complainants. The amount being paid, the Court took control of it, and, with the consent of the other parties, dismissed the Secretary of the Treasury and the Treasurer of the United States from the cause."

The case of *Portuguese American Bank v. Wells*, 242 U. S. 7, 61 Law. Ed. 116, is illustrative. In that case, this Court took occasion to reaffirm the principle which we are now advocating. In that case, a contractor had a contract with the City of San Francisco, which contained a provision that no part of the fund arising out of the contract should be assigned without the consent of the City of San Francisco. The Portuguese American Bank took an assignment of the fund, and the same was accepted by the city. Subsequently, the contractors failed, the city paid the fund to the trustee in bankruptcy, and the suit was an effort upon the part of the assignee to enforce a lien upon the fund; in other words, to enforce its assign-

ment. It was pleaded in that case upon the part of the general creditors of the bankrupt that the contract forbade the assignment. This Court said, however, that the provision was for the benefit of the municipality, was not available, and could not be asserted by any other litigant, using the following language:

“The assignability of a debt incurred under a contract like the present sometimes is sustained on the ground that the provision against assignment is inserted only for the benefit of the city. Whether that form of expression is accurate or merely is an indirect recognition of the principle that we have stated hardly is material here. It is enough to say that we are of opinion that, upon the facts stated, the assignment was not absolutely void, that therefore the bank got a title prior to that of Welles, and, consequently, that the decree must be reversed. See Hobbs v. McLean, 117 U. S. 567, 29 L. Ed. 940, 6 Sup. Ct. Rep. 870; Burnett v. Jersey City, 31 N. J. Eq. 341; Fortunato v. Patten, 147 N. Y. 277, 41 N. E. 572.”

In that case, the court reviewed the decisions of two state courts, which are directly in point.

Fortunato v. Patten, 147 N. Y. 277, 41 N. E. 572. In that case, the contractor had a contract with the municipality for doing public work, which contract contained a provision that there should be no assignment of the proceeds of the contract, or any portion thereof, without the consent of the municipality. An assignment was made, but no consent of the city was obtained. Subsequently, another assignment was made to a different assignee, who obtained the consent of the city to the assignment. A controversy having arisen between the respective assignees, the city paid the amount into court, divesting itself of all interest in the controversy, and the Court of Appeals of New York held that, as between the respective assignees, the interest of the city not being involved, the

one prior in point of time obtained the best title, using the following language:

“The provision of the contract adverted to has been treated by the court below as rendering void all assignments of moneys to grow due unless the consent of the city was obtained, and as available by any assignee to defeat the rights of a senior assignee who had failed to secure the necessary consent. We do not think that this provision is capable of any such construction. It was inserted in the contract solely for the benefit of the city, and prevents any claim being asserted against it in the absence of the consent. It is a shield to protect the city, and not a weapon with which a junior assignee is to fight his way to a more favorable position in the line of payment. The general term held that this case is governed by the maxim, ‘Modus et conventio vincunt legem.’ The late Judge Allen of this court liberally translated the maxim as follows: ‘The terms and conditions of a contract have the force of law over those who are parties to it.’ Lowrey v. Inman, 46 N. Y. 129. As between Dawson and the city, the covenant we are considering does have the force of law, for the reason they are parties to the contract, and come within the express terms of the maxim quoted; but the bank is not a party, and can not invoke this provision of the agreement to defeat the claim of Patten. The city has paid into the court the money due under the contract, and will be protected by any judgment rendered. No claim is being asserted against it, and the covenant does not apply to the situation now presented.”

The case of Burnett v. Mayor and Aldermen of Jersey City, 31 N. J. Eq. 341, was also cited by this Court with approval in the case of Portuguese Bank v. Welles. In that case, a contractor contracted with a municipality to do certain work, the contract containing a stipulation

against the assignment of the fund, or any part thereof, without the consent of the municipality. The contractor assigned a portion of the fund to a material man. Subsequently, another material man served written notice on the city, which under the laws of New Jersey gave him a superior lien against the fund. The question of priority as between the assignee and the material man who served notice in compliance with the New Jersey statute arose, and it was contended that the assignment was void because the contract stipulated that no such assignment should be had. It was held otherwise by the court, however, using the following language:

“They insist that the assignments of the fund by Ditmar were void as against them, upon two grounds: First, because they are in violation of the contract between Ditmar and the city. Second, they are fraudulent, and against the policy of the lien law.

“The contract for the erection of the building contained a provision that the contractor should not, by power of attorney or otherwise, assign any of the moneys paid under the agreement, unless by and with the consent of the Board of Public Works, to be signified by indorsement upon the agreement, and that if the contract should be assigned otherwise than as therein specified, the Board should have the power to notify the contractor to discontinue all work under the contract, and, also, power to complete the work themselves, at the contractor’s expense, the cost to be deducted out of the moneys due, or to become due, to him under the agreement. It is alleged that the express consent of the Board of Public Works was not given or indorsed on the agreement pursuant to its provisions, but, if true, the omission can not avail the appellants or avoid the claims of the respondents under the assignment. The covenant and the penalty for its violation were evidently designed for the protec-

tion of the city against the dereliction or insolvency of the contractor. The appellants had no interest in it, no right to demand its fulfillment, and were entitled to no indemnity for its violation."

The Supreme Court of Mississippi had previously passed upon the question in the case of *Fewell v. American Surety Company*, 80 Miss., 782. In that case, a contractor who had a contract for the erection of a government building became insolvent. Certain of his creditors took an assignment of the funds coming to him under the contract, and a committee of his creditors took charge of the work and completed the same, collecting from the United States government the balance unpaid under the contract. After the completion of the work and collection of the fund, creditors of the contractor, by attachment, attempted to reach the fund exclusive of the contractor's assignee, claiming that the assignment was prohibited by the Federal statute in question, that the title to the fund was still in the contractor and subject to legal proceedings against the original contractor. It appearing, however, that the United States Government had paid the fund into court, had obtained complete immunity for itself, and that no claim was had or obtained against the United States, the statute was inapplicable, the court using the following language:

"The United States is not interested in this litigation. The contract was fully executed so far as the government was concerned. The building was completed and paid for, and this controversy is alone between the parties hereto as to the disposition of the money received for its erection. Therefore, Secs. 3737, 3477, United States Revised Statutes, relating to assignments of contracts made with the government, have no application. The primary purpose of these statutes is to protect the government, and they can not be relied upon for protection by parties situated as the appellees are.

Goodman v. Niblack, 102 U. S. 556; Bailey v. United States, 109 Ib. 432; Hobbs v. McLean, 117 Ib. 567; Freedman's Savings Co. v. Shepherd, 127 Ib. 494; York v. Conde, 147 N. Y. 486, indirectly approved in 168 U. S. 642."

Other state decisions are as follows:

Farmers' National Bank v. Robinson (Kans.), 53 Pac. 762. In that case, a contractor entered into an agreement with the United States to erect a government building. He borrowed some money from a National Bank in Kansas, and gave it as security an order to receive from the United States warrants as they were issued, with the understanding that the contractor would indorse the warrants and turn them over to the bank as receiver. One of such warrants was issued and got into the hands of another bank that had advanced to the contractor a small amount of money. The bank having the original assignment of the fund, demanded the money, which was refused. Suit was brought. It was contended that the assignment was in violation of the Federal statute involved in this controversy. The Supreme Court of Kansas held otherwise, using the following language:

"The claim that the agreement of the parties was in violation of Section 3477 of the Rev. St. of the U. S. will not avail. That provision was intended for the convenience and protection of the government, and prohibits the assignment of claims before their allowance, the ascertainment of the amount due thereon, and the issue of the warrant for their payment. After the estimate was allowed and the warrant issued in payment of the claim, it was then delivered to the bank by Clum & Dingman under the authority of the building commission, the claim having been allowed and the warrant issued in payment therefor, the government was no longer concerned with the draft or the funds which it represented, and the disposition of the

same did not violate the spirit of the section mentioned. Under the transfer as made, the First National Bank acquired an equitable title to the draft and the funds represented to the extent of its claim. After a reading of the record, we are fully convinced that the decision of the Court is based upon abundant testimony, is just and equitable, and that no statutory provision was thereby violated. The judgment will be affirmed."

Hawes & Co. v. Triggs (Va.), 65 S. E. 538, is directly in point. In that case, a government contractor, in order to obtain funds for the purpose of carrying on a governmental public improvement, gave a local bank power of attorney to receive all sums of money coming to him, to collect the warrants and apply the same upon the indebtedness. The contractor became insolvent, the government paid the money into court, and divested itself of all interest in the fund, and an issue was made up between the rival claimants thereof. The Supreme Court of Virginia used the following language:

"It is admitted that the assignment relied upon by the bank is not in accordance with the terms of Section 3477. The contention of the bank is that the act was passed, as its preamble states, to prevent frauds upon the treasury of the United States, and that by a proper construction, it avoids all transfers and assignment of claims upon the United States, at the option and election of the government of the United States, but that, in this case, the government having seen fit to deposit the amount due upon the contract with the receiver of the court, and having received a full acquittance of all claims and demands growing out of the contracts which were assigned to the bank, has washed its hands of the whole transaction, and left the rights of the parties to be ascertained and decided in accordance with the laws of the state, unaffected by Section 3477 of the Revised Statutes; the final

analysis of the position of the bank being as follows: The transaction between the bank and the Trigg Company is valid as an assignment between these parties. It was made in the legitimate course of business, in good faith, to secure an honest debt, is opposed to no public policy, and is not within the mischief which was sought to be remedied by Section 3477."

The Supreme Court of Massachusetts had occasion to pass upon the identical question in the case of *Jernegan v Osborne*, 29 N. E. 520. In that case, a partnership had a contract for the erection of a certain public work for the United States Government. The partnership became financially involved, and one member of the partnership assigned all interest in the fund, including interest in the moneys from the United States, to the other members of the partnership. The fund was afterwards appropriated by Congress and paid to the other partners. Thereafter, the retiring partner brought suit to obtain a portion of the fund, upon the ground that the assignment was void. The Supreme Court of Massachusetts held that since the United States was without interest in the controversy, and no claim was asserted against it by reason thereof, the statute was inapplicable, using the following language:

"The claim of the plaintiff that the assignment is invalid under Sec. 3477 of the Revised Statutes of the United States would seem to derive some support from *Newell v. West*, *supra*. But in that case, the court relied in the main for this point upon *Spofford v. Kirk*, 97 U. S. 484. The statute has since been under consideration by the Supreme Court of the United States in other cases. *Goodman v. Niblack*, 102 U. S. 556; *Bailey v. United States*, 109 U. S. 432, 3 Sup. Ct. Rep. 272; *Hobbs v. McLean*, 117 U. S. 567; *Trust Company v. Shepherd*, 127 U. S. 494, 8 Sup. Ct. Rep. 1250. In *Goodman v. Niblack*, *supra*, the court says that there is

no doubt that the sole purpose of the statute was to protect the government, and not the parties to the assignment. This language is cited with approval in Bailey v. United States, *supra*, and the construction thus given to the statute is further upheld in Hobbs v. McLean, *supra*, and more strongly still in the last reported case which deals with the subject, viz, Trust Co. v. Shepherd, *supra*. It is also said in Goodman v. Niblack, *supra*, that the mischiefs which the statute was designed to prevent were two; first, the embarrassment to which the government might be subjected by having several persons, instead of one, to deal with, and by the introduction of strangers to the transaction; and, secondly, the introduction into the prosecution of claims, often speculative and desperate, before Congress and the departments, of the combinations and influences which might result from multiplying the number of persons interested in them as owners. None of these considerations affect the present case. The government has paid over the money, without objection, to the defendant as agent and managing owner of the *Europa*. The assignment by the plaintiff to the defendant of his interest in the claim was for the purpose of and as part of a settlement between them of all matters relating to the ship and voyage. Without undertaking to say that an assignor might not, under some circumstances, before the allowance of the claim, disregard his assignment, we think the plaintiff can not be permitted to do it in this case."

We respectfully submit that from these authorities it is perfectly apparent that no Federal question is presented by this record; that the Federal statute invoked is inapplicable. The object of the statute was to protect the United States against the presentation of fraudulent claims. Before the statute becomes applicable, it is necessary that there be pending or asserted some unsatisfied

claim against the United States. The statute is inapplicable in cases where the United States has secured immunity from liability by paying the fund into court and has divested itself of all interest in the controversy. In such case, if the statute is involved at all, it is only involved incidentally and collaterally, and before the construction of a statute shall present a Federal question, it is necessary that the statute shall be directly involved, and that some right be directly presented thereunder. It is not sufficient that a Federal statute was merely brought in question in the state court.

In the case of *Ferry v. County of King*, 141 U. S. 668, 35 Law. Ed. 895, where a similar question was involved, Mr. Chief Justice Fuller used the following language:

“We have repeatedly held that the validity of a statute is not drawn in question every time rights claimed under such statute are controverted, nor is the validity of an authority every time an act done by such authority is disputed. *Snow v. United States*, 118 U. S., 346, 30 Law. Ed. 207; *B. & B. R. R. Co. v. Hopkins*, 130 U. S. 210, 32 Law. Ed. 908; *Cook County v. Calumet & C. Canal Co.*, 138 U. S., 635, 34 Law. Ed. 1110. The validity neither of statute nor authority was primarily denied here and the denial made the subject of direct inquiry, nor was there any decision whatever against the validity of statute or authority.”

In the case of *United States v. Lynch*, 137 U. S. 280, 34 Law Ed. 200, this Court said:

“In order to justify this position, however, the validity of the authority must have been drawn in question directly and not incidentally. The validity of a statute is not drawn in question every time rights claimed under such statute are controverted, nor is the validity of an authority every time an act done by such authority is disputed. The validity of a statute or the validity of an authority is drawn

in question when the existence, or constitutionality or legality of such statute or authority is denied and the denial forms the subject of direct inquiry."

In the case of Thos. P. Kennard v. State of Nebraska, 186 U. S. 304, 46 Law. Ed. 1175, the Court said:

"But the validity of the Act of Congress referred to was not drawn in question by the facts of this controversy. Our jurisdiction to review the judgment of the State Court rests upon Section 709 of the Revised Statutes. It has often been held that the validity of a statute or treaty of the United States is not drawn in question within the meaning of Section 709 every time rights claimed under a statute or treaty are controverted, nor is the validity of an authority every time an act done by such authority is disputed."

The question is presented in the case of DeLamar Gold Mining Co. v. James Nesbit, 177 U. S. 524, 44 Law. Ed. 872, and was directly in point. In that case, the plaintiff in error who was defendant in the State Court, claimed the title to lands under a location made under the general mining laws of the United States. It was held, however, that no right, title or immunity having been asserted under the statute of the United States, the fact that its construction was involved raised no Federal question, the Court using the following language:

"From the summary of the pleadings and findings of the Court, it is clear that the defendant set up no right, title or privilege, or immunity, under a statute of the United States, the decision of which was adverse in that particular. The mere fact that the mining company claimed title under a location made by Davidson under the general mining laws of the United States (Rev. St. Sec. 2325) was not in itself sufficient to raise a Federal question, since no dispute arose as to the legality of such location, except so far as it covered ground previously lo-

cated, or as to the construction of this section. We have repeatedly held that to sustain a writ of error from this Court, something more must appear than that the parties claim title under an Act of Congress.

"The subject is fully discussed and the prior authorities cited, in the recent case of Blackburn v. Portland Gold Min. Co., 175 U. S. 571, ante, 276, 20 Sup. Court Rep. 222, which was also a contest between rival claimants of a mine under Sections 2325 and 2326. It was held that the provision in Section 2326 for the trial of adverse claims to a mining patent by a court of competent jurisdiction did not in itself vest jurisdiction in the Federal Courts, although, of course, jurisdiction would be sustained if the requirements of amount and diverse citizenship existed; and that the judgment of the Supreme Court of the state in such case could not be reviewed in this Court simply because the parties were claiming rights under a Federal statute. A like ruling was made in the still later case of Florida C. & P. R. v. Bell, 176 U. S. 321, ante 486, 20 Sup. Ct. Rep. 399. See, also, California Powder Works v. Davis, 151 U. S. 389, 38 Law. Ed. 206, 14 Sup. Ct. Rep. 350."

The Supreme Court of Mississippi used the following language in respect to the matter under discussion:

"All of these authorities are in point, and have been referred to with approval by our own court. They settle the question that the Federal statute has no application between the contesting claimants of the fund, the United States being in no way a party or interested in the result." Citing authorities. "The primary object of the statute was to prevent fraud against the United States, and the Government can always rely upon the statute in any case where it is directly interested. Here, the Government has allowed the claim, made an appro-

priation therefor, and fully paid the judgment rendered by the Court of Claims. The funds are now under the jurisdiction of our State court, and the equitable and legal rights of the parties must govern."

We respectfully submit that the foregoing pronouncement by the Supreme Court of the State of Mississippi is sound. After this money was paid into the custody of the Chancery Court of Scott County, Mississippi, the United States had absolutely no interest, and it lay entirely within the jurisdiction of the state court to distribute the fund. In doing so, no Federal Statute was involved, but ordinary principles of right, equity and justice as the same were apparent to the state court, and as to such matters, this court has no control.

POINT IV.

Statute Limiting Attorneys' Fee to Twenty Per Cent.

The defendants in error in this case invited the state court to allow the fee of fifty per cent., as provided in the contract, taking the position that the contract was entered into in the utmost good faith, the services rendered, and the defendants in error do not desire in any court to question the payment thereof.

Plaintiffs in error, in their assignment of error, predicate ground for reversal upon the action of the Supreme Court of Mississippi in holding the Act of Congress limiting fees to twenty per cent. to be unconstitutional and void.

We direct the attention of Your Honors to the fact that if our position in the preceding points is well taken, it will be unnecessary for Your Honor to decide the constitutional question. In other words, if Your Honors shall agree with the Supreme Court of the State of Mississippi

that Section 3477, prohibiting assignment of claims against the United States, is inapplicable, and that no Federal question is presented by reason thereof, and that the question was only devievable by a writ of certiorari, and not by a writ of error, then, there would be no occasion for Your Honors to decide the question in respect to the attorneys' fees, since only the defendants in error would be interested in the fund. They have prosecuted no cross-appeal from the judgment of the Supreme Court of the State of Mississippi in respect thereto; but, upon the other hand, invited the rendition of such decree as was rendered awarding to the attorneys, King & King, the full fee of fifty per cent. of the amount allowed.

We, therefore, respectfully invoke Subdivision 5 of Rule 6 of this Court, in the following language:

“The Court in any pending cause will receive a motion to affirm on the ground that it is manifest that the writ of appeal was taken for delay only, or that the questions on which the decision of the cause depend are so frivolous as not to need further argument. The same procedure shall apply to and control such motion as is provided for in cases of motions to dismiss under Paragraph 4 of this rule.”

If jurisdiction is maintained, we invoke the rule announced by the Mo. Pac. Ry. Co. v. Castle, 224 U. S., 511, wherein Chief Justice White said:

“Defendant in error moves to affirm the judgment under Subdivision 5 of Rule 6. The motion we think should prevail, since the questions urged upon our attention as a basis for reversal of the judgment have been so plainly foreclosed by decisions of this Court as to make further argument unnecessary.”

We also respectfully invoke the doctrine announced in Deming v. Carlisle Packing Co., 226 U. S. 102, through Chief Justice White, that, as the:

"Conclusion that a writ of error has been prosecuted for delay is the inevitable result of a finding that it has been prosecuted upon a Federal ground which is unsubstantial and frivolous. It follows that the question of delay is involved in and required to be considered in passing upon a motion to dismiss because of the frivolous character of the Federal question. The decisions of this Court also leave it no longer open to discussion that where it is found that a Federal question upon which a writ of error is based is unsubstantial and frivolous, the duty to affirm results."

We call the Court's attention to the following cases where, under the above rule, damages were allowed:

Prentice v. Pickersgill, 6 Wn. 518, where 10 per cent. was allowed;

Barrow v. Hall, 11 Edward 74, where 10 per cent. was allowed;

Tex. & Pac. R. R. Co. v. Wall, 161 U. S. 731, where 10 per cent. was allowed.

Deming v. Castile Phelling Co., 28 U. S. 191, where 5 per cent. was allowed.

Southern Ry. Co. v. White, 200 U. S. 372, where 10 per cent. was allowed.

We, therefore, respectfully request that interest in ten per cent. damages be allowed as authorized by this division 2 of Rule 23.

Respectfully submitted,



J. M. Morris
Attorney for Defendants in Error

DECREE OF THE CHANCELLOR.

"In the Matter of the Estate of (Mrs.) Nancy Lay, Deceased, R. C. Lay Administrator De Bonis Non.

J. F. LAY, et al

v. No. 1016.

R. C. LAY et al.

"This cause having come on for final hearing, at the regular September term, A. D., 1916, of the Chancery Court of Scott County, Mississippi, on the first and final account and statement of R. C. Lay, as administrator de bonis non of the estate of (Mrs.) Nancy Lay, deceased; the bill of complaint of J. F. Lay, T. W. Lay, W. E. Lay, Nannie Lay Haley, Alvin Rape, Mack Rape, Jakie Rape and J. F. Lay as administrator de bonis non cum testamento annexo of R. M. Lay, deceased, and as executor of the last will and testament of James G. Lay, deceased; the claim-petition of George A. King and William B. King, attorneys, for additional fees; the answer and cross-bill of respondents and the cross complainants, R. C. Lay, (Mrs.) M. E. Lay, (Mrs.) I. A. Stewart and W. H. Lay; the answer of cross-respondents, J. F. Lay, T. W. Lay, W. E. Lay, Nannie Lay Haley, Alvin Rape, Mack Rape, Jakie Rape and J. F. Lay as administrator de bonis non cum testamento annexo of R. M. Lay, deceased; and as executor of the last will and testament of James G. Lay, deceased; depositions and oral testimony; and, after hearing oral argument of counsel, the cause was taken under advisement, and briefs on behalf of all parties were submitted; and it appearing to the court that, during the late civil war, there accrued to the said Nancy Lay, now deceased, a claim against the United States for the value of certain of her property taken or destroyed by the Union or Federal Army; that, prior to her death, the said Nancy Lay assigned and transferred

her said claim against the United States to her grandson, R. M. Lay, Jr.; that after the death of the said Nancy Lay, her said grandson, R. M. Lay, Jr., was appointed and qualified as the administrator of the estate of his said grandmother, the said Nancy Lay, deceased; that the above named respondents and cross-complainants are the widow and children or legal heirs of said R. M. Lay, Jr., deceased; that, after the death of said R. M. Lay, Jr., his son, the said R. C. Lay, was appointed and qualified as administrator de bonis non of the estate of said Nancy Lay, deceased, as successor of his father, deceased, as administrator; that during the lifetime of the said R. M. Lay, Jr., he, as administrator of his said grandmother's estate, made, without authority of law or sanction of any court, two fee contracts with said King & King, Attorneys, to prosecute said claim, in each of which contracts the legal title to and ownership of said claim was asserted and recognized to be in the estate of Nancy Lay, deceased, and to one of which contracts the oath of the said administrator was made that said claim belonged to the estate of his deceased grandmother; that the said R. M. Lay, Jr., as administrator of the estate of Nancy Lay, deceased, filed a suit against the United States on said claim in the Court of Claims, and in support of said claim, made oath, and produced such evidence as to cause said Court of Claims finally to find and adjudge that said claim belonged solely to the estate of Nancy Lay, and that her estate was entitled to the amount thereof, and that no assignment thereof had been made to any one; that the said administrator de bonis non now has on hand in cash, collected from the United States on said claim, the sum of \$2,243.20, the sole property of the estate of Nancy Lay, deceased; and that the said complainants are legally entitled to said sum or fund, and the same should be distributed among them as hereinafter provided.

"Whereupon, it is considered, and so ordered, adjudged and decreed, that the first and final account of

said administrator de bonis non, showing the said sum of \$2,243.20 on hand in cash, be, and the same is, hereby passed, allowed and approved; that the bill of complaint be, and the same is, hereby sustained; that the cross-bill be, and the same is hereby dismissed, for the reason that the cross-complainants, as the heirs and privies of R. M. Lay, Jr., deceased, are estopped to claim said sum or fund because of the said administrator and the final judgment of the Court of Claims adjudging this sum or fund to belong to the estate of Nancy Lay, deceased; that the petition and claim of King & King, Attorneys, for an additional fee of thirty per centum, be, and the same is, hereby dismissed and disallowed; that out of the said sum now on hand, the said administrator de bonis non shall first pay the costs hereof, excluding the costs incidental to and directly accruing from the claim of the cross-complainants and the evidence thereof, which costs are hereby taxed against the said respondents and cross-complainants; secondly, to Hill & Hill, Attorneys, the sum of \$50.00 for their professional services for the administrator de bonis non; thirdly, to himself the sum of \$112.00 in reimbursement for the annual premiums on his official bond; fourthly, to himself the sum of \$157.02, being seven per centum (8 per cent) of said sum or fund, as commissions for himself and his predecessor in office; and, fifthly, the balance remaining shall be paid over to Hudson & McKay, as attorneys for the complainants, to be distributed among the complainants in accordance with the terms and provisions of the last wills and testaments of R. M. Lay, deceased, and Jas. G. Lay, deceased, that is to say, as follows: To J. F. Lay, eleven sixtieths (11-60); to W. E. Lay, eleven sixtieths (11-60); to each of Lou A. Lay and Hattie Graham, sole lawful heirs of T. W. Lay, deceased, eleven one hundred and twentieths (11-120); to Nannie Lay Haley, sixteen sixtieths (16-60); to Alvin Rape, eleven one hundred and eightieths (11-180); to Mack Rape eleven one hundred and eightieths (11-180); and to Jakie Rape eleven one hundred and eightieths (11-180); for all of which let

proper process issue; and that, upon compliance with this decree, the said administrator de bonsis non be discharged as such, and that he and the surety on his official bond be relieved from all further liability thereon.

"And the said administrator de bonsis non, and the said respondents and cross-complainants having prayed an appeal, without supersedeas, from this decree to the Supreme Court, said appeal is hereby granted, as of course and statutory right, upon the execution of a bond in the penalty of five hundred dollars, conditioned according to law, and with sufficient sureties to be approved by the clerk of this court, the filing of such bond shall stay execution until the appeal shall be passed on by the Supreme Court.

"Ordered, adjudged and decreed this 26th day of March, 1917.

G. C. TANN,
Chancellor."

FEE AGREEMENT.

WHEREAS, Nancy Lay, now deceased, late of Forest, in the County of Scott and State of Mississippi, has a claim against the United States for stores and supplies taken by the U. S. Army during the war, and has appointed George A. King, of Washington, D. C., her attorney to prosecute the same before any of the courts of the United States, and upon appeal to the Supreme Court of the United States, or before any of the Departments of the Government, or before the Congress of the United States, or before any officer, commission, convention or tribunal authorized to take cognizance of said claim, or through any diplomatic negotiations, as may be deemed best for the interests of the said claimant; therefore, this agreement witnesseth, that said claimant hereby agrees to pay to said George A. King as her attorney, a fee equal to fifty (50) per cent. of the amount which may be allowed on said claim. The officers of the

Government are hereby directed to deliver to said attorney, the check, draft, certificate or other medium of payment that may be issued in settlement of said claim, and a lien upon said check, draft, certificate or other medium of payment is hereby recognized in favor of said attorney for said fee until payment thereof; and said claimant hereby agrees to pay from time to time all necessary costs arising in the prosecution of said claim, such as for taking testimony, printing and costs of court, and to execute such power of attorney as may be necessary or convenient for the successful prosecution and collection of said claim.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this 11th day of April, eighteen hundred and ninety-one.

ROBERT LAY,
Admr., Nancy Lay, Dec'd.

Attest:

T. B. JOHNSON
ROBERT SUMMERS (?)

STATE OF MISSISSIPPI, County of Scott, SS.

Be it known that on the 8th day of July, 1891, before me personally came Robert Lay, of the county and state aforesaid, to me well known to be the identical person who executed the foregoing instrument of writing, and acknowledged the same to be her act and deed, and also made oath that she is the owner of the claim referred to in the said instrument. I also certify that the contents of the above instrument were read and explained to the grantor before signing the same.

In testimony whereof, I have hereunto set my hand and affixed my official seal the day and year aforesaid.

N. T. LILES,
Official Signature.
Chancery Clerk.

All corrections made before execution.
(SEAL)

FEE AGREEMENT.

WHEREAS, R. M. Lay, Jr., Admr. of Nancy Lay, deceased, late of Gale, in the County of Scott and State of Mississippi, has a claim against the United States for property taken by U. S. Army in February, 1864, and has appointed George A. & William B. King, of Washington, D. C., his attorneys to prosecute the same before any of the courts of the United States, and upon appeal to the Supreme Court of the United States, or before any of the Departments of the Government, or before the Congress of the United States, or before any officer, commission, convention or tribunal authorized to take cognizance of said claim, as may be deemed best for the interests of the said claimant, hereby agrees to pay to said George A. & William B. King, as his attorneys, a fee equal to fifty per cent. of the amount which may be allowed on said claim. The officers of the Government are hereby directed to deliver to said attorneys the check, draft, certificate or other medium of payment that may be issued in settlement of said claim, and a lien upon said check, draft, certificate or other medium of payment is hereby recognized in favor of said attorneys for said fee until payment thereof; and said claimant hereby agrees to pay from time to time all necessary costs arising in the prosecution of said claim, such as for taking testimony, printing and costs of court and to execute such powers of attorney as may be necessary or convenient for the successful prosecution and collection of said claim.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this 31st day of January, 1900.

R. M. LAY, Jr., Admr.

Attest:

S. E. LILES,
H. EASTLAND.

**DECREE, SUPREME COURT, STATE OF
MISSISSIPPI.**

**IN THE SUPREME COURT OF THE STATE OF
MISSISSIPPI.**

R. C. LAY, JR., ET AL

v. No. 20,110.

J. F. LAY, ET AL.

This day this cause came on to be heard; and the court having considered the same, doth order adjudge and decree that the decree heretofore rendered by the chancellor in the lower court in said cause be and is heretofore rendered by the chancellor in the lower court in said cause be and is hereby reversed and set aside; and it is ordered, adjudged and decreed by this court that the original bill of complaint filed by the appellees herein be and is hereby dismissed.

It is further ordered, adjudged and decreed that King & King and Paul B. Johnson, attorneys for appellants in said cause, are entitled to thirty per cent. additional attorney's fees upon the amount of money collected by R. C. Lay, Jr., Administrator the Estate of Mrs. Nancy Lay, deceased, from the United States Government, provided for in their contract of employment; and it is ordered, adjudged and decreed that R. C. Lay, Jr., Administrator de bonis non of the estate of Mrs. Nancy Lay, deceased, out of the funds in hand, pay and satisfy such claim.

It is further ordered, adjudged and decreed that the costs in this case, both in this court and in the lower court, be paid by the said R. C. Lay, Jr., Administrator de bonis non of the estate of Mrs. Nancy Lay, deceased, out of any moneys now in his hands as such administrator; and that after paying the balance of the fee of King & King and Paul B. Johnson, Attorneys, in accordance with their contract of employment, it is ordered, ad-

judged and decreed that the said R. C. Lay, Jr., Administrator de bonis non of the estate of Mrs. Naney Lay, deceased, distribute the net proceeds of the funds in question among the heirs at law of R. M. Lay, Jr.; and that the said R. C. Lay, Admr., after such distribution, report the same, accompanied by proper vouchers with his final account, to the chancery court of Scott County, Mississippi, for allowance.

SUPREME COURT OF MISSISSIPPI.

R. C. LAY, Administrator, et al,
Appellants

v. No. 20,110.

J. F. LAY, et al., Appellees.

PETITION FOR WRIT OF ERROR.

Considering themselves aggrieved by the final decision of the Supreme Court in rendering judgment against them in the above entitled case, the appellees hereby pray a writ of error, from the said decision and judgment, to the United States Supreme Court, and an order fixing the amount of a supersedeas bond.

ASSIGNMENT OF ERRORS.

And the said J. F. Lay et al., appellees, assign the following errors in the records and proceedings of the said case:

The Supreme Court of Mississippi erred in holding and deciding that Section 3477 of the Revised Statutes of the United States had no effect, operation or application in the said case; that the final judgment of the United States Court of Claims, adjudging the title of the property in question to belong to the person through whom appellees claim, had no effect, operation or application in said case; and that Section 4 of the Act of

Congress of March 4, 1915, limiting to twenty per centum the amount of fees to be paid to attorneys on account of services in connection with certain claims against the United States, was invalid and unconstitutional.

The said errors are more particularly set forth as follows:

First. That the voluntary assignment of a claim against the United States, prior to the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof, was valid and effective, notwithstanding the provisions of Section 3477 of Revised Statutes of the United States, the appellees contending that such assignment was null and void under said section of the Revised Statutes.

Second. That the final judgment of the United States Court of Claims, adjudging the claim against the United States and its funds or proceeds, in question in said case, to be the property of the person through whom appellees claim, had no effect, operation or application in said case, the appellees claiming in accordance with the said judgment of the Court of Claims and the appellants to the contrary.

Third. That Section 4 of the Act of Congress of March 4, 1915, limiting to twenty per centum the amount of fees to be paid attorneys on account of services rendered in connection with the claim against the United States, in question in said case, was invalid and in violation of the Constitution of the United States.

For which errors the appellees pray that the said judgment of the Supreme Court of the State of Mississippi, dated June 3, 1918, be reversed and a judgment rendered in favor of the appellees and for costs.

J. C. BRYSON,
WM. I. MCKAY,
Attorneys for Appellees.

State of Mississippi,

Supreme Court.

Let the writ of error issue upon the execution of a bond by the appellees to the appellants in the sum of One Thousand Dollars; such bond, when approved, to act as a supersedeas.

Dated July 9, 1918.

SYDNEY SMITH,
Chief Justice, Supreme Court of Mississippi.

THE UNITED STATES OF AMERICA, SS.

The President of the United States to R. C. Lay, (Mrs.) M. E. Lay, (Mrs.) I. A. Stewart, W. H. Lay, R. C. Lay as administrator de bonis non of the estate of Nancy Lay, deceased, George A. King, Wm. B. King and Paul Johnson, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States, at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Mississippi, wherein J. F. Lay, W. E. Lay, Nannie Lay Haley, Lou A. Lay, Hattie Graham, Alvin Rape, Mack Rape, Jakie Rape, and J. F. Lay as administrator de bonis non cum testamento annexo of R. M. Lay, deceased, and as executor of the last will and testament of Jas. G. Lay, deceased, are plaintiffs in error and you are defendants in error, to show cause, if any thereby, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of the State of Mississippi, this 9th day of July, 1918.

SYDNEY SMITH,

Chief Justice, Supreme Court of Mississippi.

Attest:

GEO. C. MYERS,

Clerk, Supreme Court of Mississippi.

I, attorney of record for R. C. Lay, (Mrs.) M. E. Lay, (Mrs.) I. A. Stewart, W. H. Lay and R. C. Lay as administrator de bonnis non of the estate of Nancy Lay, deceased, defendants in error in the above entitled case, hereby acknowledge due service of the above citation, and enter an appearance in the Supreme Court of the United States.

W. H. WATKINS,

Attorney for R. C. Lay, (Mrs.) M. E. Lay, (Mrs.) I. A. Stewart, W. H. Lay and R. C. Lay, D. B. N. of Nancy Lay, Deceased.

I, attorney of record for George A. King, Wm. B. King and Paul Johnson, defendants in error in the above entitled case, hereby acknowledge due service of the above citation, and enter an appearance in the Supreme Court of the United States.

G. Q. WHITFIELD,

Attorney for George A. King, Wm. B. King and Paul Johnson.

WRIT OF ERROR.

UNITED STATES OF AMERICA, SS.:

THE PRESIDENT OF THE UNITED STATES OF
AMERICA,

TO THE HONORABLE THE JUDGES OF THE
SUPREME COURT OF THE STATE OF MISSISSIPPI,
GREETING:

Because in the record and proceedings, as also, in the rendition of the judgment of a pleat which is in the said Court before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between R. C. Lay, (Mrs.) M. E. Lay, (Mrs.) I. A. Stewart, W. H. Lay, R. C. Lay as administrator de bonis non of the estate of Nancy Lay, deceased, George A. King, Wm. B. King, and Paul Johnson, and J. F. Lay, W. E. Lay, Nannie Lay Haley, Lou A. Lay, Hattie Graham, Alvin Rape, Mack Rape, Jakie Rape and J. F. Lay as administrator de bonis non cum testamento annexo of R. M. Lay, deceased, and as executor of the last will and testament of Jas. G. Lay, deceased, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said state, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of the said J. F. Lay, W. E. Lay, Nannie Lay Haley, Lou A. Lay, Hattie Graham, Alvin Rape, Mack Rape, Jakie Rape and J. F.

Lay as administrator de bonis non cum testamento annexo of R. M. Lay, deceased, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in said Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what, of right, and according to the laws and customs of the United States, should be done.

Witness the Hoonrable Edward Douglass White, Chief Justice of the United States, the ninth day of July, in the year of our Lord, one thousand, nine hundred and eighteen.

R. O. EDWARDS, Clerk.

U. S. District Court, Southern District of Mississippi.

Allowed, July 9, 1918.

SYDNEY SMITH,

Chief Justice, Supreme Court of Mississippi.

BOND.

J. F. LAY, et al., Plaintiffs in Error,

v.

R. C. Lay, Administrator, et al., Defendants in Error.

KNOW ALL MEN BY THESE PRESENTS, That we, J. F. Lay, W. E. Lay, Nannie Lay Haley, Lou A. Lay, Hattie Graham, Alvin Rape, Mack Rape, Jackie Rape and J. F. Lay as administrator de bonsis non cum testamento annexo of R. M. Lay, deceased, and as executor of the last will and testament of Jas. G. Lay, deceased, as principals, and the American Surety Company of New York, as surety, are held and firmly bound unto R. C. Lay, (Mrs.) M. E. Lay, (Mrs.) I. A. Stewart, W. H. Lay, R. C. Lay as administrator de bonsis non of the estate of Naney Lay, deceased, George A. King, Wm. B. King and Paul Johnson, in the sum of One Thousand Dollars, to be paid to said obligees, to which payment, well and truly to be made, we bind ourselves jointly and severally firmly by these presents.

Signed with our hands, and dated this 9th day of July, 1918.

Whereas, the above named plaintiffs in error seek to prosecute their writ of error to the United States Supreme Court to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Mississippi.

Now, therefore, the condition of this obligation is such that if the above named plaintiffs in error shall prosecute their said writ of error to effect, and answer all costs and damages that may be adjudged if they should fail to make good their plea, then this obligation to be void; otherwise, to remain in full force and effect.

J. F. Lay, by Wm. I. McYay, Atty.

W. E. Lay, by Wm. I. McKay, Atty.

Nannie Lou Haley, by Wm. I. McKay, Atty.

Lou A. Lay, by Wm. I. McKay, Atty.

J. F. Lay, Admr., D. B. N. C. T. A. of R. M. Lay, J.
F. Lay, Extr. of will of Jas. G. Lay, by Wm. I. McKay,
Atty.

Hattie Graham, by Wm. I. McKay, Atty.

Alvin Rape, by Wm. I. McKay, Atty.

Mack Rape, by Wm. I. McKay, Atty.

Jakie Rape, by Wm. I. McKay, Atty.

The American Surety Companw of New York,
by Wm. I. McKay, Resident Vice-President.

U. G. FLOWERS, Res. Asst. Secy.

The foregoing bond approved, and to operate as a
supersedeas. Dated July 9, 1918.

SYDNEY SMITH,

Chief Justice, Supreme Court of Mississippi.

Bond agreed to be satisfactory in all respects.

W. H. WATKINS

G. Q. WHITFIELD,

Attorneys for Defendants in Error.